



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Technology Advancement Group
File: B-238273; B-238358
Date: May 1, 1990

John A. McEwan, for the protester.
Robert H. Swennes II, Esq., Department of the Navy, for the agency.
Robert Spiegel, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. The necessity for a business license in a particular state or locality is generally a matter between the contractor and the issuing authority (although it can be considered in making a determination of responsibility) and will not be a bar to a contract award, absent a specific licensing requirement in the procurement solicitation.
2. Under the simplified procedures for small purchases, quotations beyond these initially received may generally be solicited and accepted by the government at any time prior to acceptance of any quote.

DECISION

Technology Advancement Group (TAG) protests awards to Microtrain, Inc., under request for quotations (RFQ) No. N00173-90-Q-S124 (-S124), and to Word Technology Systems, Inc., under blanket purchase agreement (BPA) No. N00173-88-A-0030 (-0030), by the Naval Research Laboratory (NRL) for computer-related goods and services. TAG argues that the awardees under both small purchase procurements are not responsible, and that the contracting officer acted in bad faith in making the awards with the knowledge that the awardees were unlicensed and nonresponsible. Under RFQ -S124, TAG also argues that NRL acted improperly and in bad faith in extending the date for receipt of quotes.

The protests are dismissed in part and denied in part.

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RFQ -S124 was issued under small purchase procedures on November 6, 1989, for troubleshooting, software integration, and repair services. Quotes were originally scheduled to be submitted by November 29, but the closing date was extended to December 15. NRL received only TAG's quotation by December 15. The contracting officer believed TAG's price was excessive and therefore solicited price quotations from several other vendors on or before December 20, 1989. The quotes received ranged from TAG's high price of \$135 per hour to Microtrain's low price of \$62 per hour. On December 29, NRL issued to Microtrain a purchase order. On December 30, TAG protested to the NRL that the awardee was not a responsible contractor. The agency denied this protest on January 5, 1990, and on January 9, TAG protested to our Office.

NRL solicited oral price quotations on BPA -0030 from several vendors for 30 integrated computer circuit module memory chips on January 9, 1990, under small purchase procedures. The quotes ranged from TAG's high price of \$205.00 per item to Word Technology's low price of \$173.55 per item. Purchase was made from Word Technology in the amount of \$5,206.50, under its BPA on January 9. TAG protested this award to our Office on January 19.

On both procurements, TAG asserts the contracting officer acted in bad faith in determining that the awardees were responsible, because neither firm had the requisite Virginia licenses. There is no merit to this assertion. Although a contracting officer may determine that the absence of an appropriate business license renders a bidder nonresponsible, the requirement for a state or local license is generally a matter between the contractor and the issuing authority, and will not be a bar to a contract award absent a specific requirement in the procurement solicitation. Mercury Business Serv., Inc., B-237220, Nov. 7, 1989, 89-2 CPD ¶ 443. In this case, neither solicitation made reference to licensing requirements of any kind.

Moreover, the contracting officers have documented their determinations of the affirmative responsibility of both awardees, each of which had successfully performed previous contracts for NRL. TAG's claims of bad faith simply are not supported by probative evidence. See ACCESS for the Handicapped, 68 Comp. Gen. 432 (1989), 89-1 CPD ¶ 458.

TAG argues that it should receive the award on RFQ -S124 because it submitted the only quote by the closing deadline specified in the solicitation. However, this procurement was conducted under small purchase procedures, which are a simplified method for government acquisition of commercial

goods and services. Federal Acquisition Regulation (FAR) § 13.102. Unlike a sealed bid or a proposal (submitted in response to a request for proposals), a quotation is not a legally binding offer which can be accepted by the government to form a contract. ACCESS for the Handicapped, 68 Comp. Gen. 432, supra. A contract comes into being solely upon the supplier's acceptance of a government order for supplies or services in response to the supplier's quotation and the government may withdraw its order anytime prior to acceptance. FAR § 13.108(a),(c) (FAC 84-29). Therefore, the language of an RFQ will not generally be construed as establishing a firm closing date, absent a late quotation provision (not present here), expressly providing that quotations must be received by that date in order to be considered. ACCESS for the Handicapped, 68 Comp. Gen. 432, supra.

In the present case, the record not only refutes TAG's allegations of bad faith but shows that the contracting officer was fulfilling her duty to promote competition by assuring quotes from more than one source, given her concern that TAG's quoted price was unreasonable. FAR §§ 3.106(b)(1),(2),(5) (FAC 84-28). Since three firms submitted lower quotes than TAG, it appears the contracting officer was justified in her assessment.

On RFQ -S124, the protester also argues the solicitation is overly restrictive in that it was "not consistent with computer service industry standards for small purchase and therefore difficult to complete." However, since our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent before the closing date for receipt of quotations be filed prior to that time, TAG's post-award protest of the alleged solicitation improprieties is untimely and will not be considered. 4 C.F.R. § 21.2(a)(1) (1989); ACCESS for the Handicapped, 68 Comp. Gen. 432, supra.

Finally, TAG argues that these awardees will not perform in accordance with their contract terms. However, whether an awardee performs a contract according to its terms is the subject of contract administration, a question wholly within the authority of the procuring agency, and not under our bid

protest jurisdiction. 4 C.F.R. § 21.3(m)(1); Central Virginia Ambulance Serv. Inc., B-225530, Dec. 5, 1986, 86-2 CPD ¶ 651.

The protests are denied in part and dismissed in part.

for Robert T. Murphy
James F. Hinchman
General Counsel